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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 317

MARY A. HUFFMAN,

Petitioner,

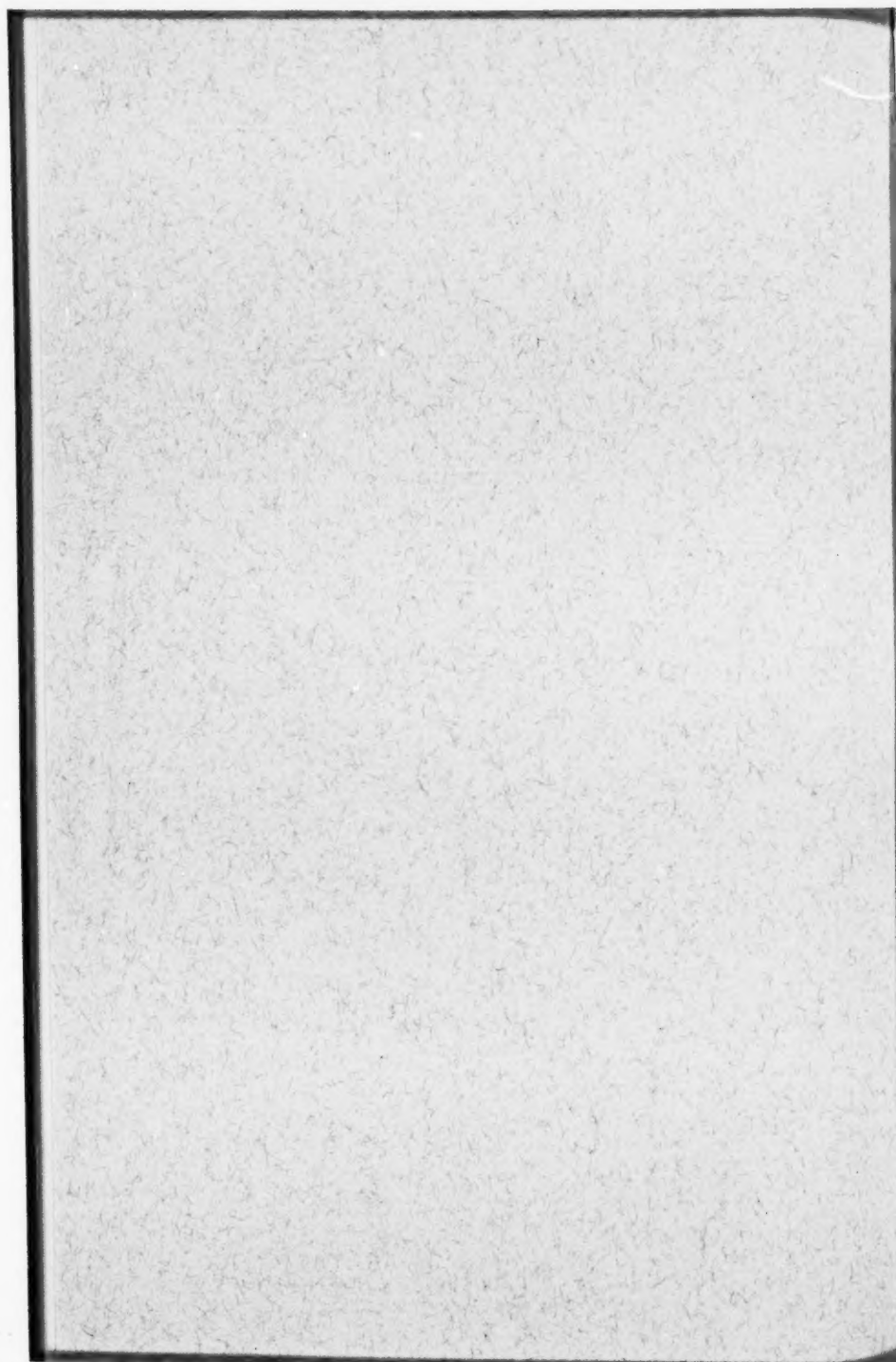
vs.

THE CITY OF WICHITA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS AND BRIEF IN SUPPORT THEREOF.

**JOHN W. ADAMS,
THOMAS E. ELCOCK,**
Counsel for Petitioner.

**H. C. CASTOR,
JOHN BOYER,**
Of Counsel.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 317

MARY A. HUFFMAN,
Petitioner and Appellant Below,

vs.

THE CITY OF WICHITA,
Respondent and Appellee Below.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petitioner, Mary A. Huffman, respectfully shows to this Honorable Court.

A.

Summary Statement of the Matters Involved.

Petitioner, Mary A. Huffman, as surety, executed an \$11,000.00 supersedeas bond on appeal to this Court in the case of *The Home Cab Company v. The City of Wichita, et al.*, 151 Kans. 697; 42 P. (2) 972; 295 U. S. 716; 55 Sup. Ct. 658; 79 L. Ed. 1672.

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In that case the Home Cab Company brought an action against the City of Wichita and certain of its officials to restrain the enforcement of ordinances providing specified fees per cab for the operation of taxicabs. The injunction was denied by the District Court of Sedgwick County, Kansas, the court of first instance, and its judgment was affirmed on appeal by the Supreme Court of Kansas, the highest court of the State. The Cab Company procured the allowance of an appeal to this Court, which was by this Court dismissed (1) for the want of a properly presented Federal question and (2) for the want of a substantial Federal question.

Pending such appeal, appellee therein, The City of Wichita, filed a motion in the Supreme Court of Kansas (R. 101) reciting that such court had entered its order withholding the sending of the mandate to the District Court pending an appeal to this Court; that no time had been fixed for filing a bond; that the amount of bond should be fixed and time given to file it; that appellant Cab Company was operating cabs and had already become liable for \$4,025.00 for license fees for the year 1934; for which amount no adequate bond had been required; that the Cab Company, in appellee's opinion, was not financially responsible for such amount; that the license year for 1934 would end December 31, 1934; that it was to be assumed that the appeal would not be disposed of by this Court until 1935; that approximately the same amount of license fee would be due for such year, and that in addition to such license fees it had been compelled to employ special counsel whose fees would not be less than \$2,000.00. The motion concluded as follows (R. 103):

“That the bond in this case should be fixed at not more than Eleven Thousand Dollars (\$11,000.00), conditioned that the appellant, The Home Cab Company, will be liable and will pay to The City of Wichita, one of the

appellees, all damages and costs which The City of Wichita will suffer by reason of the failure to pay licenses fees for the years 1934 and 1935, and for all other damages and costs, including counsel fees incurred in this appeal if taken.

“WHEREFORE, these appellees, pray that an order enter, requiring the appellant, The Home Cab Company, to post a supersedeas bond covering the damages herein enumerated and costs, for not less than Eleven Thousand Dollars (\$11,000.00), and that such order provide that such bond shall be filed not later than the 28th day of December, 1934, said bond to be approved by this court.”

The Cab Company replied to this motion (R. 103) stating that it had no objection to the Court fixing a reasonable amount for the supersedeas bond and giving a reasonable time in which to furnish said bond, denied that it was operating so many cabs as the City claimed; stated that the amount of license fees that might be due from it for the balance of the year 1934 was \$1,920.00; that a like amount would fully protect the City for the year 1935; that the City Commission of the City was about to amend the license fee provision by reducing it; that appellant's expense on appeal should not exceed \$1,000.00, and that a supersedeas bond in the sum of \$4,000.00 would be adequate.

Upon these motions the Supreme Court of Kansas entered the following order (R. 114):

“Now comes on for decision the motion of the appellees for an order fixing the amount of bond pending an appeal to the United States Supreme Court herein, and also the reply of the appellant to said motion; and thereupon after due consideration by the court it is ordered that the appellant give to the appellees a good and sufficient bond to be approved by this court or one of the justices thereof, in the sum of Eleven Thousand (\$11,000.00) Dollars to be filed with the clerk of this court on or before the 29th day of December, 1934,

conditioned, that the said appellant will pay to the appellee all damages and costs that might accrue to the appellee by reason of the granting of this order."

Within the time limited by the order, petitioner, Mary A. Huffman, as surety, executed bond (R. 17) for the amount which was conditioned as follows:

"NOW THEREFORE, the conditions of this obligation are such that if the above named principal obligor shall prosecute its said appeal to effect and answer all costs and damages if it shall make good its plea and shall pay all costs and damages that shall be adjudged against them on account of said appeal and/or on account of the said principal obligor failing to remit said final judgment of said The Supreme Court of Kansas, and shall abide the orders of this Court and of the Supreme Court of the United States of America, then this obligation shall be void, otherwise same shall be and remain in full force and effect."

In the present action suit was brought on this bond by the City against petitioner and the Cab Company, the amended petition, so far as material here, simply alleging that the bond had been given, that a certain number of taxicabs had been operated by the Cab Company during the years 1934 and 1935; that certain license fees were thereby due under the provisions of certain city ordinances, and prayed judgment for the amount of such license fees. Such petition failed to allege that any damage had been caused by the restraint and no proof was offered that the restraint had caused the damage. The court of first instance (R. 67, 79) and the Supreme Court of Kansas (R. 134), both held that the bond, by its terms, obligated petitioner, as surety, to pay the amount of license fees fixed by the applicable City ordinances for the number of cabs which it was alleged were operated by the Cab Company, judgment for the amount was rendered against petitioner

and the Cab Company (R. 79) and affirmed on appeal. There was neither allegation nor proof of any prior attempt to collect the license fees from either the taxicab company or the operators, and neither allegation nor proof that the restraint, if any was imposed, had in any way caused or contributed to the failure to collect the license fees from the Cab Company or the operators, or operated in any way to render them uncollectible.

Certain of the license fees for which judgment was rendered by the lower court, and affirmed by the Supreme Court of Kansas, accrued under a city ordinance which was passed subsequent to the time of the giving of the bond (R. 120), and certain other license fees for which judgment was rendered, although provided for by a city ordinance, were not collected by the City from others in like situation with the Cab Company, such others having been permitted to pay under an ordinance subsequently passed which reduced the fees (R. 72).

The matters involved are:

a. Whether a surety is liable at all upon a supersedeas bond given in connection with an appeal to this Court from the final judgment of the highest court of a State where that court has not by its order stayed the enforcement of the judgment;

b. Whether, assuming restraint existed, the liability of a surety on a supersedeas bond given upon appeal from the highest court of a State to this Court, is limited to consequential damages caused by the restraint, which damages must be (1) pleaded and (2) proven.

c. Whether a surety on a supersedeas bond on appeal to this Court from the highest court of a State, is liable for license fees fixed by a city ordinance passed subsequent to the time of the giving of such supersedeas bond.

d. Whether a surety on a supersedeas bond on appeal from the highest court of a State to this Court is liable for taxicab license fees under a city ordinance which was applied against her alone and was not enforced against others in like situation with her principal, such others being permitted to operate cabs upon payment of a lesser license fee.

e. Whether the right of appeal to this Court can be impeded and burdened by the decision of the highest court of a State through the judicial process of reading into a supersedeas bond a condition not written therein and not authorized by Federal law, and enforcing such superadded condition.

The Supreme Court of Kansas in its opinion in this case read into the bond an undertaking on behalf of petitioner to pay these license fees and affirmed the judgment rendered by the trial court for such amounts.

B.

Reasons Relied on for the Allowance of the Writ.

Petitioner asserts:

a. the law is that where no stay order is entered, no restraint is imposed by the giving of a supersedeas bond, and there having been no stay order in this case, there was no restraint and hence no liability;

b. that the law is that the only damages recoverable upon a supersedeas bond given on appeal from the highest court of a State to this Court, are consequential damages and there having been neither pleading nor proof in this cause that the restraint, if any was imposed, caused or contributed to the failure of the City to collect the license fees either from the Cab Company or the operators of the cabs, there is no basis for the entry of the judgment entered in this cause;

e. the law is that a city ordinance must be uniformly applied and that where certain of the license fees which formed the basis for a portion of the judgment in this cause accrued, if at all, under an ordinance which was only sought to be enforced against petitioner as surety in this cause, and was not enforced against others in like situation with the principal obligor on the bond, such portion of the judgment cannot stand;

d. the law is that a superadded condition whereby she is sought to be held for license fees accruing under an ordinance passed after her bond was given, is not within the terms of the bond, is not authorized by Federal law and is void; that certain of the license fees which formed the basis for a portion of the judgment in this cause accrued, if at all, under a City ordinance passed by respondent City subsequent to the giving of the supersedeas bond in this case;

e. that the law is that the right of appeal to this Court cannot be limited and impeded by the courts of a State through the judicial process of adding and enforcing conditions not written into a supersedeas bond and not authorized by Federal Law. That the decision of the court of first instance, affirmed by the Supreme Court of the State of Kansas, by reading into the bond a condition which was not written therein and enforcing such condition, imposes restrictions and limitations upon the right of appeal to this Court, which are not authorized by the applicable Federal statutes fixing and governing the conditions upon which appeals may be had.

On these points the decision of the Supreme Court of Kansas is to the contrary.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of

this Honorable Court directed to the Supreme Court of Kansas commanding it to certify and send to this Court for its review and determination on a certain date to be therein named, the full and complete transcript of the record and of proceedings in the case in that court numbered and entitled on its docket No. 34,645, The City of Wichita, a Municipal Corporation, Appellee, *v.* The Home Cab Company, et al., (Mary A. Huffman), Appellant, and that the said judgment of the Supreme Court of Kansas may be reviewed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

MARY A. HUFFMAN,
Petitioner.

By JOHN W. ADAMS,
THOMAS E. ELCOCK,
Her Attorneys.
Both of Wichita, Kansas.

Of Counsel:

H. C. CASTOR,
JOHN BOYER,
Both of Wichita, Kansas.

